Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1998

MAJOR LEAGUE UMPIRES ASSOCIATION,

Petitioner,

v.

NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS AND THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does a labor arbitration exceed the scope of his or her authority, to interpret and apply the terms of a collective bargaining agreement, where the arbitrator first determines that the parties had never made an agreement over the circumstances in dispute and then proceeds to resolve the dispute by supplying terms to address the dispute?

2. May a court, in an action to vacate a labor arbitration award, where the award was a product of an arbitration agreement between the parties that called for a reasoned opinion, ignore the arbitrator's reasoning and enforce the award solely on the basis that, the arbitrator's stated findings and reasoning aside, the award was capable of coming within some permutation of the contract's construction?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The names of all parties to the proceedings in the United States Court of Appeals for the Third Circuit are as follows: The Major League Umpires Association, the National League of Professional Baseball Clubs and the American League of Professional Baseball Clubs.

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PETITION FOR WRIT OF CERTIORARI

The Major League Umpires Association, the plaintiff below and the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on July 23, 1998.

OPINIONS BELOW

The July 23, 1998 opinion of the Court of Appeals, whose judgment is herein sought to be reviewed, is not reported and is reprinted in the separate appendix to this petition, App. 1-5. The prior opinion of the United States District Court for the Eastern District of Pennsylvania entered September 2, 1997 is also unreported and is reprinted in the separate appendix to this petition, App. 6-15.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on July 23, 1998. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

The Labor Management Relations Act, § 301(a).

§ 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

STATEMENT OF THE CASE

Relevant Procedural History

This action was brought pursuant to § 301 of the Labor Management Relations Act seeking the review and modification of a labor arbitration award. The Major League Umpires' Association ("the Association"), the American League of Professional Baseball Clubs ("the American League"), and the National League of Professional Baseball Clubs ("the National League") (collectively, "the Leagues"), were parties to a collective bargaining agreement that became effective January 1, 1991 and expired December 31, 1994 ("the 1991 Agreement"). Article VII of the 1991 Agreement provided that,

in addition to their annual salary, the Association's members would be provided additional compensation "for providing services with respect to" Special Events. The Article VII compensation was broken down into two components. The first component was a fixed, or "pool", component which was ten thousand ($10,000.00) dollars or twenty thousand ($20,000.00) dollars payable to all members of the umpire staff, regardless of whether they actually received a Special Events assignment, solely on the basis of their years of service.[1] The second component, the working money component, which was two thousand five hundred ($2,500.00) dollars or five thousand ($5,000.00) dollars, was paid only to umpires who were selected to work an event.

As a result of a strike by the Major League Baseball Players Association in 1994, the Leagues decided to cancel the last six weeks of the regular season as well as the 1994 post-season rather than to staff the teams with replacement players. After cancelling the 1994 post-season, the Leagues refused to pay the umpires their 1994 Special Events compensation.

The 1991 Agreement contained an arbitration clause which provided the following, in pertinent part:

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[1] It was impossible to assign every umpire to work a Special Event in a given year because there are nearly twice as many eligible umpires as there are assignments. Notwithstanding that fact, each and every umpire was entitled to pool payments determined solely by years of service.

XV. Dispute Settlement

A. Settlement of Disputes

> In the event of a dispute concerning a claimed violation of the provisions of this Agreement by either party thereto the matter shall be referred to the League President involved and a representative of the Association; and if an agreement is not reached by these two individuals within ten days the matter shall be referred to an arbitrator mutually agreed upon as sole neutral arbitrator to finally determine the matter.

Pursuant to that provision, the Association commenced an arbitration by the filing of demands for arbitration against the Leagues on January 6, 1995 with the American Arbitration Association's Philadelphia, Pa. office ("the AAA"). The AAA's Labor Arbitration Rules provide the following with respect to the form of award:

> **38. Form of Award**
>
> The award shall be in writing and shall be signed either by the neutral arbitrator or by a concurring majority if there is more than one arbitrator. The parties shall advise the AAA whenever they do not require the arbitrator to accompany the award with an opinion.

A hearing in this matter was held before an arbitrator ("the arbitrator") on May 28, 1996. The parties submitted briefs on July 29, 1996. A decision was issued on October 7, 1996 and received by the Association on October 11, 1996 ("the Decision"). The Association filed a Request for Reconsideration, Clarification and/or Interpretation on October 23, 1996 ("the Request to Reconsider and/or

Clarify"). On October 25, 1996, the AAA advised the Association that, absent the Leagues' consent, the Arbitrator would not be permitted to consider the Association's Request to Reconsider and/or Clarify. On November 1, 1996, the Leagues objected to the Association's Request to Reconsider and/or Clarify. On November 4, 1996, the AAA notified the parties that it was not permitting the Arbitrator to consider the Association's Request to Reconsider and/or Clarify. This action was commenced by the filing of a complaint on November 4, 1996 in the United States District Court for the Eastern District of Pennsylvania.

The Leagues filed a motion to dismiss or in the alternative for summary judgment on January 13, 1997. The Association filed a response to the Leagues' motions, and filed a cross motion for summary judgment on February 18, 1997. By memorandum and order dated August 29, 1997, the Honorable Edmund V. Ludwig ("the district court"), granted the Leagues' motion for summary judgment and denied the Association's cross motion for summary judgment ("the August 29, 1997 Opinion"). The Association's notice of appeal was filed with the third circuit court of appeals on September 5, 1997.

On or about December 11, 1997, the Leagues filed a motion for summary affirmance. The Leagues' motion was denied by order dated January 21, 1998. The appeal was argued on July 14, 1998 before a panel consisting of circuit judges Sloviter and Roth and district judge John Feikens sitting by designation. The panel's decision affirming the district court was entered on July 23, 1998.

STATEMENT OF FACTS

The Association is the bargaining representative for the major league baseball umpires. The umpires are employed by either the American League or the National League. As mentioned above, the dispute between the Association and the Leagues was whether the umpires were entitled to their Article VII Special Events Compensation after the Leagues unilaterally canceled the 1994 post-season schedule because of a players' strike.

By way of history, the umpires first received pool payments as a result of an arbitration award issued in 1984 by Baseball's then current commissioner, Peter V. Ueberoth. In creating the pool concept, Commissioner Ueberoth ruled:

> [T]hat a general increase in compensation to all umpires (utilizing the pool concept), whether they were assigned to work a post-season event or not, was warranted.

Commissioner Ueberoth specifically did not base his award on anything other than his recognition that the umpires were generally entitled to more pay and that the "pool" was an appropriate vehicle by which to effectuate a general pay increase. The pool concept was then embodied in a November 20, 1984 Memorandum of Understanding. The Memorandum of Understanding provided that:

> The aggregate amounts to be paid to members of the umpiring staff of the two Leagues as **compensation for Special Events** shall be as follows. . . .

(emphasis added).

Subsequent to Commissioner Ueberoth's creation of the pool, the Leagues, in 1985, expanded the League Championship Series from five games to seven games. This expansion resulted in an arbitration before former President Richard M. Nixon over whether additional compensation was due umpires as a result of the Leagues' change in working conditions ("the Nixon Arbitration"). It is important to note here that, unlike the arbitrator in this case, President Nixon was specifically empowered by the parties to either adopt the position of either party or to fashion a compromise "award at any point in between." President Nixon was thus vested with broad, interest-type, arbitral authority to resolve that dispute by any means he saw fit. It is also important to note that the parties specifically agreed that President Nixon's award would be binding for only the years 1985 and 1986.

In his decision, President Nixon fashioned an arbitrary compromise award by adopting the Leagues' position for the year 1985, and the Association's position for the year 1986. In effect, President Nixon found that for the year 1985, the term "as compensation for Special Events" entitled the umpires to no increase in the pool as a result of the expansion of the League Championship Series. Dichotomously, for the year 1986, President Nixon found that that same term, applied to the same identical circumstances, entitled the umpires to a pool increase of $64,000.00.[2]

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[2] President Nixon attributed 53.3% of the working money in 1985 to working the League Championship Series. He, therefore, attributed the same portion of the pool money ($300,000.00) to the League Championship Series. President

The next bargaining agreement after Commissioner Ueberoth's award and President Nixon's award was negotiated in 1987. During those negotiations, the Leagues, by and through their negotiator, Robert J. Kheel, Esq. ("Mr. Kheel"), authored a change in the language of Article VII to its present form by changing the operative language from "as compensation for Special Events" to "as compensation for providing services with respect to Special Events".

The 1994 regular or "championship" season commenced on or about April 4, 1994. The championship season was scheduled to conclude on or about October 1, 1994. The 1994 post-season, consisting of the best-of-five Division Championship Series, the best-of-seven League Championship Series and the best-of-seven World Series, was scheduled to commence on or about October 4, 1994 and to conclude no later than October 30, 1994. The 1994 All Star Game was held on July 12, 1994 in Pittsburgh, Pa. and was officiated by six umpires. The 1994 championship season was interrupted, on August 12, 1994, by a strike by the Major League Baseball Players' Association which is the exclusive bargaining representative for baseball players at the major league level ("the Players"). Despite the fact that there was a pool of replacement players available through colleges, semi-professional leagues and professional minor leagues, the Leagues decided to cancel the remainder of 1994 championship season and all of the post-season events. The umpires'

Nixon then increased the League Championship Series portion of the pool money by 40% because of the increase of games from five to seven.

employment was not suspended or altered in any manner by the Players' strike. In addition, the Leagues also did not suspend or discontinue any employment benefit, other than the payments that are at issue in this case, as a result of that strike.

Article VII of the 1991 Agreement provided the following, in pertinent part:

Article VII – ADDITIONAL COMPENSATION FOR SPECIAL EVENTS AND EXHIBITION GAMES

A. Additional Compensation League Championship and World Series

The aggregate amounts to be paid to members of the two Leagues **as compensation for providing services with respect to Special Events**[3] shall be as follows:

1. All members of the umpiring staff of the two Leagues in their first through fifth years of service shall receive $10,000.00;

2. All members of the umpiring staff of the two Leagues in their sixth or greater years of service shall receive $20,000.00;

3. All umpires who work in the All Star Game shall receive $2,500.00;

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[3] According to the Leagues, in authoring the highlighted language, they were attempting to bargain for the availability of a supply of post-season services by the bargaining unit.

4. All umpires who work in the league championship series or the World Series shall receive $5,000.00.

(emphasis added).

As mentioned above, Article VII payments were thus composed of two elements: (1) a fixed amount paid to each umpire annually according to his years of service ("the pool payment") and (2) a variable amount paid to each umpire who actually worked an event, which amount was determined by the event worked ("the working money") (both amounts, collectively, shall be referred to as "Article VII pay"). Throughout the 1991 Agreement, the term "Special Events" is used to refer to the All Star Game, and the post-season events (the Division Championship Series, the League Championship Series and/or the World Series).

As the demands for arbitration set forth, the issue was whether, in 1994, the umpires, pursuant to Article VII, "provided services with respect to Special Events". The damages that were claimed in the arbitration, were the payments that were due to each umpire for the 1994 season under Article VII. The total amount of those payments was $1,440,000.00.

The Association asked the Arbitrator to award payments under Article VII, generally, on two bases. First, the Association argued that the 1991 Agreement did not condition any employment benefit on the performance of any specific task. In furtherance of that position, the Association argued that, absent a suspension of employment, all benefits under the agreement should have continued regardless of whether the Leagues provided the

umpires with work opportunities. Second, the Association asked the Arbitrator to consider that it is solely within the Leagues' power to hold Special Events and that the umpires, as a unit, actually worked the 1994 All Star Game and were ready, willing and able to work every other Special Event that the Leagues held. Based on that, assuming, *arguendo*, that Article VII pay had to be earned, the Association asked the Arbitrator to find that the Leagues received what they bargained for, an availability of bargaining unit services, therefore, the compensation was earned and to award it in full.

The Leagues' main retort was that Article VII expressly conditioned pay on work and since the Leagues canceled the 1994 post-season "work", they claimed that they had no obligation to make any Article VII payments. As a fall back argument, the Leagues argued that any Article VII payment awarded should be reduced according to the formula adopted by President Nixon for the 1986 season which arbitrarily weighted the different Special Events.

The arbitrator concluded that the evidence established that there was no provision in the 1991 Agreement that applied to the parties' dispute. The arbitrator found that:

> [T]here was no meeting of the minds [between the parties] regarding the umpires' entitlement to additional compensation for Special Events in the event of a players' strike or lockout.

App. 43. The arbitrator's conclusion that there were no terms in the 1991 Agreement regarding the circumstances at issue did not, however, as it should have, put an end to

the arbitrator's function. The arbitrator went on to arbitrarily determine that each umpire was entitled to a small portion of the Article VII payments due him for 1994. The arbitrator based his award on the Nixon formula and multiplied the pool payment due a given umpire by a fraction, the numerator of which was the sum of Special Events working money attributable to the All Star Game and the denominator of which was the sum of working money for all Special Events.

Both the district court and the third circuit expressly recognized the arbitrator's finding that there was no contractual provision for him to interpret and apply. Both courts, however, ignored the arbitrator's express findings opting to enforce the award because they concluded that the award conceivably could have come from some permutation of contractual interpretation. Both courts affirmed the award because they reasoned that, notwithstanding the arbitrator's finding that the parties had no agreement on the effect of a players' strike on Special Events compensation, the contract could conceivably be interpreted to preclude such payments. See, App. 4 & 13.

REASONS FOR GRANTING THE WRIT

Certiorari Should Be Granted to Resolve a Conflict Among Lower Courts Regarding Whether An Arbitrator May Resolve a Dispute in a Labor Arbitration After the Arbitrator Concludes that the Parties Never Made An Agreement Covering the Circumstances in Dispute

Jurisdiction to review labor arbitration awards exists pursuant to § 301(a) of the Labor Management Relations

Act. *Warehouse Employers Local 169 v. Acme Market, Inc.*, 473 F.Supp. 709, 712 (E.D.Pa. 1979), aff'd, 620 F.2d 291 (3d Cir. 1979). Because the peaceful resolution of labor disputes through arbitration is favored, arbitration awards have traditionally been entitled to a certain amount of judicial deference. Judicial deference should not, however, be confused with carte blanche approval of any decision that an arbitrator may make. *Madison Hotel v. Hotel and Restaurant Employees, Local 25*, 128 F.3d 743, 748 (C.A.D.C. 1997), reh'g grted, by ___ F.3d ___ (C.A.D.C. 1998). Judicial deference ends once the arbitrator exceeds his authority. *Delta Queen Steamboat Co. v. District 2 Marine Engineers Beneficial Association*, 889 F.2d 599, 602 (5th Cir. 1989) cert. den. by 498 U.S. 853 (1990).

The arbitrator's authority is very precise. By including an arbitration provision in a collective bargaining agreement, the parties are only bargaining for the arbitrator's interpretation of their agreement. *Stroehmann Bakeries, Inc. v. Local 776 of the International Brotherhood of Teamsters*, 969 F.2d 1436, 1441 (3d Cir. 1992) cert. den. by 506 U.S. 1022 (1992). This means that arbitrators are not empowered to resolve all disputes. An arbitrator may not venture beyond the bounds of his or her authority. If the dispute submitted is not a dispute that is capable of being resolved by the interpretation of the agreement, the arbitrator has no authority. See, *Id.*

As noted by this Court:

> [A]n arbitrator is confined to interpretation and application of the collective bargaining

> agreement[4]; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's award manifests an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

United States Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 597, 80 S.Ct. 1358, 1361 (1960). An arbitrator dispenses his own brand of industrial justice when he adds or detracts from the express terms of the collective bargaining agreement. See, *United Glass and Ceramic Workers of North America v. A.S.G. Industries*, 417 F.Supp. 89, 92 (E.D.Tenn. 1976) relying on *A. & A.I. Wrkrs. v. T.R.W.*, 402 F.2d 727, 731-732 (6th Cir. 1968) cert. den. by 395 U.S. 910 (1969). As this Court has further observed:

> As the proctor of the bargain, the arbitrator's task is to effectuate the intent of the parties. His source of authority is the collective bargaining agreement and he must interpret and apply that agreement in accordance with the "industrial common law of the shop" and various needs and desires of the parties.

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[4] The Arbitrator acknowledged that:

> The issue before [him was] whether the 1994 umpiring staff [was] entitled to Special Events compensation described in Article VII.A.1 and 2 of the collective bargaining agreement.

In other words, the Arbitrator acknowledged that the issue to be decided in the Arbitration was whether, under Article VII, the umpires provided "services with respect to Special Events" for the 1994 season. The Arbitrator's function was thus to interpret and apply Article VII to the facts of the parties' dispute.

United States Steelworkers of America v. Enterprise Wheel and Car Corp., supra. at 597 (emphasis added).

As admirable as it may be, arbitrators are not authorized to decide disputes simply on the basis of what they believe is "fair" or equitable. See, *Ethyl Corp. v. United Steelworkers of America*, 768 F.2d 180, 185 (7th Cir. 1985) cert. den. by 475 U.S. 1010 (1986). Arbitrators are authorized only to interpret and apply the existing provisions of a collective bargaining agreement. See, *Enterprise Wheel and Car Corp.*, supra. at 597; and *Madison Hotel*, supra., at 748.

So limited is the scope of the arbitrator's authority, that an arbitrator, for example, exceeds his authority of interpreting and applying the terms of a collective bargaining agreement when he makes his decisions based on the requirements of an act of legislation rather than on the contractually manifested intent. *United States Steel Workers of America v. Enterprise Wheel and Car Corp.*, supra. at 597. By way of further example of the limitations on the arbitrator's authority, in the field of employee discipline awards are routinely vacated where the contract limits the arbitrator's authority to the determination of whether an employee engaged in prohibited activity, and the arbitrator determines not only that issue but also the issue regarding the propriety of the discipline. E.g., *Delta Queen Steamboat Co. v. District 2 Marine Engineers Beneficial Association*, 889 F.2d 599, 604 (5th Cir. 1989) cert. den. by 498 U.S. 853 (1990); and *Metro Chevrolet, Inc. v. Union DeTronquistas de Puerto Rico*, 835 F.2d 3, 5 (1987); and *St. Louis Theatrical Co. v. St. Louis Theatrical Brotherhood*, 715 F.2d 405, 408 (8th Cir. 1983).

A good example of the role that the limiting principle of interpreting and applying the collective bargaining agreement play on the labor arbitrator's authority in the dispute resolution process can be found in *W.R. Grace and Co. v. Local Union No. 759*, 652 F.2d 1248 (5th Cir. 1981) aff'd by 461 U.S. 757 (1983). In that case, the collective bargaining agreement required that job assignments be determined by seniority. The employer began to ignore seniority on the basis of a conciliation agreement it entered into with the EEOC aimed at eradicating discrimination. The union filed for arbitration over the employer's disregard of the contractual seniority rights. The employer attempted to enjoin the arbitration arguing that the conciliation agreement took precedence over the collective bargaining agreement. In that injunction action it was determined that the employer could not use the conciliation agreement to disregard collectively bargained seniority rights and the parties were ordered to proceed to arbitration with the seniority grievances. At the arbitration, the arbitrator ruled that, because the employer was acting in good faith, attempting to abide by the conciliation agreement, and because the employer could not have anticipated the ruling negating the effect of the conciliation agreement on the collective bargaining agreement, "it would be inequitable and manifestly unfair to penalize the employer . . . ". *Id.* at 1252. However, because the award ignored the seniority provisions of the collective bargaining agreement, and decided the case solely on the basis of equity and fairness, it was determined to have exceeded the arbitrator's authority. *Id.*

In order to determine whether the arbitrator has exceeded the scope of his authority, a court has no choice but to look to the arbitrator's opinion. *International Brotherhood of Electrical Workers, Local 369 v. Olin Corp.*, 471 F.2d 468, 472 (6th Cir. 1972). When an opinion is provided, there is no more reliable method of determining whether an arbitrator exceeded his power than to review his thoughts and reasoning. This is especially true in this case where the arbitrator was required to provide a reasoned award in the form of an opinion.[5] When the arbitrator's own words manifest an infidelity to his obligations, or when they indicate that the arbitrator has added to the express terms of the contract, the decision must not be enforced. See, *Enterprise Wheel and Car*, supra, at 597; see also, *United Glass and Ceramic Workers of America v. A.S.G. Industries, Inc.*, 417 F.Supp. 89, 93 (D.C. Tenn. 1976) (relying on *Local 342 v. TRW*, 402 F.2d 727, 731-732 (6th Cir. 1968) cert. den. by 395 U.S. 910 (1969)).

In this case, the arbitrator's authority, as set forth in Article XV, was to resolve disputes "concerning a claimed violation of the provisions of the Agreement". The language specifically limits an arbitrator's authority to the interpretation and application of specific collective bargaining agreement provisions. See, *Boeing Co. v. International Union, United Automobile, Aerospace and Agricultural*

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[5] The fact that a reasoned award was required in this case makes this Court's observation in the *Enterprise Wheel and Car* case, that arbitrators have no obligation to give reasons for their award, inapplicable. *Enterprise Wheel and Car*, supra, at 597. The arbitrator in this case was required to provide the reasons for his award and it is those reasons, therefore, that the Court must consider to determine if the award is legitimate.

Implement Workers of America, 349 F.2d 412, 413 (3d Cir. 1965); and *WJLA v. National Association of Broadcast Employees*, 88 L.C. ¶ 11,856 (D.C.D.C. 1980). The task then should have been to determine whether the award was based on the interpretation and application of the terms of the 1991 Agreement.

In plain, unmistakable language, the arbitrator in this case stated that he exceeded his authority. This arbitrator unequivocally determined that there was no provision of the 1991 Agreement for him to interpret or apply because he determined that the parties had never come to an agreement on how Article VII pay would be affected by a Players' strike. Specifically, the arbitrator determined that:

> Had the parties agreed that all or part of the pool payments established in Article VII would be paid to umpires in the event of a players' strike or lockout, language would have appeared either in Article VII or, more appropriately and logically, in Article XIV. No such language appears, and thus this Arbitrator must conclude that there was no meeting of the minds regarding the umpires' entitlement to "additional compensation for Special Events" in the event of a players' strike or lockout.

App. 43. A clearer, more succinct acknowledgment that a collective bargaining agreement lacks even the slightest indicia of the parties' intent regarding a particular set of circumstances is difficult to imagine. In light of that, it cannot be controverted that what this arbitrator did, in fashioning his remedy, was to supplant the bargaining process with his own notion of "fairness."

As mentioned above, it is not the role of the arbitrator to rewrite the 1991 Agreement, supply new terms to the 1991 Agreement or dispense his own brand of industrial justice in order to resolve every dispute. *United Glass and Ceramic Workers v. A.S.G. Industries*, supra at 92. The arbitrator's authority to resolve the dispute must be found within the confines of the 1991 Agreement. If, as the arbitrator determined, the agreement did not address the issue, any resolution by the arbitrator would necessarily have to add to the agreement which is impermissible. If the 1991 Agreement cannot resolve the dispute in question, an arbitrator in this type of matter simply has no authority.

Recognizing the limitations on their own power, arbitrators who have made the very same determination that this arbitrator made, that the parties had not come to a "meeting of the minds" regarding the circumstances in dispute, themselves routinely acknowledge that they have no further authority to decide the dispute. E.g., *Carlile & Doughty, Inc.*, 9 L.A. 238, 241 (1947); and *Consolidation Coal Co.*, 67 L.A. 257, 260 (1976); and *National Cleaning Contractors*, 70 L.A. 917, 925 (1978). Arbitrators consistently recognize that when they attempt to resolve a labor dispute under such circumstances, they are usurping the collective bargaining process and rewriting the agreement. *Gulf Engineering Co.*, 29 L.A. 188, 191 (1957).

For example, in *Carlile & Doughty, Inc.*, the collective bargaining agreement provided that the union and the employer would establish a committee to fix a wage scale based upon the average rates paid by other concerns in the industry for similar work. The problem arose when

the committee learned that most other firms in the industry used an incentive program which provided a low base pay yet the opportunity to earn high take-home earnings through incentives. The union's position was that the average wages that it was referring to in the collective bargaining agreement was the take-home earnings. The employer's position was that the average earnings that it was referring to was the base pay. The arbitrator determined that:

> The Union and the [employer] each had a different idea as to what was meant by the language used. Their minds did not meet.
>
> * * *
>
> The arbitrator is without power to fix or determine [a fair and equitable method of fixing rates] for that would be to write an agreement for the parties. This he cannot do unless specifically authorized so to do by the parties. He has not been so authorized. His sole function and power are to interpret the contract.

In *Gulf Engineering Co., Inc.*, supra, the collective bargaining agreement provided the following:

> Each employee covered by this Agreement who has had one year's continuous service from date of employment and has worked 1000 hours during said year for an Employer shall receive one week's vacation with pay from said Employer on a basis of five 8-hour days at his regular hourly rate of pay.

The union's position was that the term "continuous employment" meant 1000 hours of work. The employer's position was that that term required uninterrupted work.

Based on the evidence, the arbitrator found that the parties never reached an agreement on the disputed term and he, therefore, refused to make an award. To do so, the arbitrator acknowledged "would be substituting his judgment for a result which is normally the product of collective bargaining between the parties".

This case is no different from the arbitration decisions discussed above. While arbitration decisions may not be binding on this Court, or the arbitrator for that matter, they do provide a cogent picture of the labor arbitration profession's own recognition of its inherent jurisdictional limitations.

The seventh circuit addressed the issue involved in this case in *Johnson Controls, Inc. v. United Association of Journeymen*, 39 F.3d 821 (7th Cir. 1994) cert. den. by 115 S.Ct. 1957 (1995). In that case, the employer, a manufacturer of pneumatic control systems, and the union which represented plumbers and pipefitters, disagreed over whether their collective bargaining agreement permitted the employer to assign preventive maintenance work to non-bargaining unit employees. At arbitration, the arbitrator determined that there was "no meeting of the minds" over the meaning of disputed contractual language. The arbitrator also determined that the union agreed to the language in the relevant contract provision with an understanding that the language was unclear and would have to be resolved through arbitration. *Id.* at 823-824. The district court vacated the award entered in favor of the union because the district court concluded, based upon the arbitrator's reasoning, that the arbitrator lacked authority to decide the dispute once he determined that the parties never came to a "meeting of the

minds" over the meaning of the disputed term. *Id.* at 824. The seventh circuit concluded, however, that the district court erred in vacating the award because the court through a distinction between an ambiguity was a "patent" ambiguity as opposed to a "latent" ambiguity, noting that the former type of ambiguity may be resolved by the arbitrator while the latter type of ambiguity was "outside of the arbitrator's interpretive authority". *Id.* Specifically, the court in *Johnson Controls* stated:

> '[W]hen [as, apparently, in that case] the parties agree to a patently ambiguous term, they submit to have any dispute over it resolved by interpretation' . . . Only if the contract provision contains a 'latent ambiguity', or in other words is the result of a mutual misunderstanding, is it . . . outside the arbitrator's interpretive authority.

Id. (quoting, *Colfax Envelope Co. v. Local No. 458*, 20 F.3d 750, 754 (7th Cir. 1994)). The reason that the *Johnson* court held that patent ambiguities are subject to arbitral resolution, where latent ambiguities are not, is because the court assumed that parties agree to patently ambiguous language with the intent that it will ultimately be submitted to, and resolved by, an arbitrator.

A patent ambiguity arises from the language itself and is apparent to the parties. It arises from the use of insensible or obscure language. *Allegheny International, Inc. v. Allegheny Ludlum Steel*, 40 F.3d 1416, 1424 (3d Cir. 1997). A latent ambiguity is a term that appears unequivocal to both parties but is not. In other words, a latent ambiguity is the product of a mutual misunderstanding. *Johnson Controls*, supra. at 825-826. A latent ambiguity is

an ambiguity that cannot be decided in a non arbitrary fashion. *A.M. Castle & Co. v. United Steel Workers*, 898 F.Supp. 602, 608 (N.D. Ill. 1995).

The ambiguity in *Johnson Controls* was considered patent because the union all but acknowledged to the arbitrator that it knew when it entered into the agreement that the term in question was going to have to be clarified at arbitration. There is no such evidence in this case. In fact, in this case, the parties' disagreement is quite genuine. The language at issue had survived seven years and two agreements without a challenge. Further, this arbitrator specifically determined that there was a mutual misunderstanding over the meaning of the language used in Article VII. The arbitrator found that the Association never intended for the pool portion of the payment to be tied to work and in that regard, the pool payment was simply, as Commissioner Ueberoth intended, nothing more than a vehicle for additional salary. The arbitrator found that what the Leagues intended with respect to Article VII was to tie the pool payments to specific work. If Article VII is ambiguous, the ambiguity should have been resolved in favor of the Association because the Leagues authored the disputed language. If it is not interpreted in favor of the Association on the basis of *contra proferendum*, there is no non-arbitrary way to resolve the ambiguity. Assuming, *arguendo*, that the latent/patent distinction is correct, this case was on all fours with the *Johnson Controls* case.

The Association believes, however, that the patent/latent distinction is not correctly applied in this context. In making that distinction, the seventh circuit overlooked and did not address, the well-established principle that

labor arbitrators may not, without the parties' express consent, add or detract from a collective bargaining agreement. E.g., *United Glass and Ceramic Workers v. A.S.G. Industries*, supra at 92. Whether the ambiguity is patent or latent; if, as this arbitrator determined, the parties have no agreement on a certain set of circumstances, i.e., the payment of Article VII compensation in the event of a Players' strike, then the resolution of such a dispute necessarily means that the arbitrator must rewrite the contract to supply a missing term. Rewriting a contract is the penultimate dispensation of "industrial justice". Therefore, whether a disagreement is patent or latent, if the arbitrator concludes that the contract does not address the dispute in question, as the arbitrator in this case did, the arbitrator should have, at most, instructed the parties to bargain.

The arbitration agreement in this case empowered the arbitrator to determine only disputes concerning the violation of provisions of the 1991 Agreement. If, as he determined, there was no "meeting of the minds", then there was no provision in the 1991 Agreement regarding the Leagues' obligations to make pool payments when the Leagues cancel the post-season, that could be interpreted or applied. The arbitrator, therefore, was not empowered to decide the dispute or to fashion a remedy pro-rating pool payments. The dispute, rather, is one that should have been left to the parties to resolve through the bargaining process and not the arbitration process.

The arbitrator's desire to foster, promote, or maintain labor peace by resolving disputes is exemplary. Labor peace, however, is not the only issue here. The parties to a collective bargaining relationship, in the first instance,

have the right to control their own destiny through negotiations and, eventually, agreement. The arbitrator's means of achieving the goal of promoting labor peace is limited to interpreting and applying terms that the parties have negotiated and to which they have agreed. The arbitrator may not try to achieve labor peace by usurping the collective bargaining process. If the finding that the parties never came to a "meeting of the minds" in the 1991 Agreement, on the effect of a post-season Players' strike, on Article VII compensation was to stand, as it has, the arbitrator has usurped the collective bargaining process. The Award should have been remanded with instructions that it be modified to strike the arbitrator's remedy and to advise the parties of their rights and obligations to pursue this matter through bargaining.

In its decision in this case, the third circuit acknowledged that the arbitrator determined that there was no meeting of the minds between the parties regarding what would happen to Article VII pay in the event of a post-season players' strike. App. 2. However, the third circuit, in affirming the district court, and hence the award, ignored that express finding. Instead the third circuit seemingly found that as long as the arbitrator's result could fall within the realm of arguable interpretations of the agreement, it was legitimate. *Id.* at 4. In other words, the third circuit found that it was purely the result, not the reasoning, that matters.

The third circuit and seventh circuit are in clear disagreement over the effect that an arbitrator's reasoning plays on the legitimacy of an arbitration award. There are now two circuits who take diametrically opposed routes to analyzing the validity of an award which is

rendered after a finding by an arbitrator that the parties' contract does not include a provision dealing with the disputed circumstance. The seventh circuit, as set forth in *Johnson Controls* will at least review the matter to determine if the ambiguity is latent or patent and, at least in the case of a finding that there is a latent ambiguity, the award would be illegitimate. The third circuit on the other hand will seemingly ignore the nature of the contractual ambiguity and the arbitrator's reasoning and enforce the award so long as it could be supported by some permutation of the contract.

All that the parties to a labor arbitration can rely on to discern the labor arbitrator's findings and conclusions is the reasoned decision. If, in the decision, the arbitrator unequivocally states that his finding is that the parties have not reached an understanding or agreement regarding the issue in dispute, the arbitrator's authority must necessarily cease. Once an unequivocal finding that no understanding exists is reached, that the arbitrator could have reached a different result is irrelevant. By utilizing the AAA, the parties clearly bargained for a reasoned award. The court should have looked to that reasoning when making the determination that the award is valid.

Besides resolving the conflict between the seventh and third circuits over the validity of an arbitrator's award rendered despite a finding that the parties' contract was silent on the dispute, there is another compelling reason for the Court to grant certiorari in this case. The third circuit has clearly ignored the arbitrator's reasoning in this case in favor of the amorphous "draws its essence from the contract" principle. The third circuit will

uphold an award that is capable of passing some permutation of contractual construction regardless of how the arbitrator arrived at that point. Courts, however, can no longer afford to overlook reasoning. Demanding anything less than a cogent, reasoned award from an arbitrator undermines the usefulness and attractiveness of arbitration. Arbitration participants must know that the arbitrator based his award on a full understanding of the facts and a rational interpretation of the contract. The alternative dispute resolution bodies, such as the AAA, realize as much and now require reasoned awards. The labor arbitration profession itself recognizes the value of reasoned awards which explains the expansive collection of such awards in volumes like the *Labor Arbitration Reports*. This Court, as the highest authority in the land, should now reconsider its observation in *Enterprise Wheel and Car* and require reasoned awards in labor arbitrations. At the very least, the Court should recognize that, when an award is required to be accompanied by reasoning, the reasoning should form the basis of a judicial determination of the award's legitimacy.

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that this petition for a writ of certiorari be granted.

Respectfully submitted,

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NOT-FOR-PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 97-1702

THE MAJOR LEAGUE UMPIRES' ASSOCIATION,

Appellant,

v.

THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS; THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 96-cv-07437)
District Judge: Honorable Edmund V. Ludwig

Argued on July 14, 1998

Before: SLOVITER and ROTH, *Circuit Judges*
FEIKENS[1], *District Judge*

(Memorandum Opinion filed JUL 23, 1998)

MEMORANDUM OPINION

ROTH, *Circuit Judge*:

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[1] Honorable John Feikens, United States District Court Judge for the Eastern District of Pennsylvania, sitting by designation.

This case arises as a result of the 1994 strike by the Major League Baseball Players' Association. Rather than continue with replacement players, the American and National Leagues of Professional Baseball Clubs (the "Leagues") opted to cancel the remainder of the season, including the Division Championship Series, the League Championship Series and the World Series. The 1994 All-Star Game had been played on July 12, 1994. A group of six umpires officiated at that game.

The post-season championship series along with the All-Star Game constitute Special Events, for which the Umpires receive additional compensation under their terms of their collective bargaining agreement with the Leagues. This Special Events compensation is broken into two components, a fixed amount, or pool payment to all umpires, based upon years of service and a second component, working money, payable only to those umpires selected to work during a Special Event. As a result of the players' strike, the Leagues declined to pay the Umpires any Special Events compensation for the 1994 season. The Major League Umpires' Association (the "Umpires") disputed this decision.

Under the terms of the agreement between the parties, the question of whether the Umpires were entitled to receive Special Events compensation in the form of pool payments in the event that a players' strike canceled post-season play was referred to arbitration. Following a hearing and full briefing by the parties, the arbitrator issued a detailed opinion sustaining the Umpires' grievance in part and denying it in part. He found that there had been no "meeting of the minds" between the Leagues and the Umpires with regard to whether the Umpires

would be entitled to receive Special Events compensation in the event of a players' strike. Based upon a careful reading of the text of the collective bargaining agreement, he concluded that Special Events compensation was not guaranteed to the Umpires, nor was it a salary that would have been payable in the event of a strike under their terms of the agreement. He did hold, however, that the Umpires were entitled to receive that portion of the 1994 pool payments that could be attributed to the All-Star Game, as that was the only Special Event played during the 1994 season.

The Umpires appealed the decision of the arbitrator by filing a complaint in the United States District Court for the Eastern District of Pennsylvania, pursuant to § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a). The Leagues filed a Motion to Dismiss the case or in the alternative for Summary Judgment. The Umpires filed a response to the Leagues' Motion and filed a Cross Motion for Summary Judgment. The district court granted the Leagues' Motion for Summary Judgment in its entirety and denied the Umpires' Cross Motion. The present appeal followed.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 as it arises from a final decision by the district court. We apply the same deferential standard in reviewing the district court's decision as that court did in reviewing the arbitrator's interpretation of the collective bargaining agreement. *Matteson v. Ryder System, Inc.*, 99 F.3d 108, 112 (3d Cir. 1996).

An award in arbitration is enforceable provided it "draws its essence from the collective bargaining agreement." *United Steel Workers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Although the language of the collective bargaining agreement is silent regarding the question of whether Umpires are entitled to receive Special Events compensation in the event of a players' strike, an arbitrator may exercise his or her "delegated power to decide unforeseen or unresolved problems arising out of gaps or content in the contract." *Price v. International Bhd. Of Teamsters, Chauffeurs, Warehousemen & Helpers of America*, 457 F.2d 605, 610 (3d Cir. 1972). While the language of the agreement does not necessarily foreclose pool payments in the event of a strike, the arbitrator's conclusion that such payments are not mandated by the agreement is not irrational and is plainly drawn from the essence of the collective bargaining agreement. Nor did the arbitrator exceed his authority by looking to an earlier arbitration between the same parties to conclude what proportion of the pool monies should be paid to the Umpires in recognition for their work during the 1994 All-Star Game. *See Penntach Papers v. United Paperworkers International Union, AFL-CIO-CLC*, 896 F.2d 51 (3d Cir. 1990) (recognizing the value of examining the results of similar arbitrations before making an arbitration award).

The decision of the district court will be affirmed.

TO THE CLERK:

Please file the foregoing Memorandum Opinion.

By the Court,

/s/ Jane R. Roth
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE MAJOR LEAGUE UMPIRES' ASSOCIATION	:	Civil Action
v.	:	
THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS	:	
and	:	
THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS	:	No. 96-7437

MEMORANDUM

Ludwig, S.J. August 29, 1997

Plaintiff The Major League Umpires' Association appeals an arbitrator's decision denying the umpires compensation for the unplayed 1994 post-season and allowing a formula apportionment to the umpires who worked the 1994 All-Star Game.[1] This memorandum accompanies an order granting the motion of defendants, The American League of Professional Baseball Clubs and The National League of Professional Baseball Clubs for summary judgment; and denying plaintiff's cross-motion for summary judgment. Fed. R. Civ. P. 56[2] Jurisdiction is

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[1] The complaint requests that the arbitration decision be vacated, remanded or modified. Compl. at 19.

[2] The facts are set forth in the parties "Stipulated Record for Summary Judgment."

conferred by § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C.A. § 185(a).

I. Facts

From January 1, 1991 through December 31, 1994, the parties operated under a collective bargaining agreement, and, during this period, the American League and the National League each employed 32 umpires. On July 12, 1994, six umpires officiated at the 1994 All-Star Game in Pittsburgh. On August 12, 1994, the players engaged in a work stoppage that lasted until March, 1995. As a result, the remainder of the 1994 season, the Division Playoffs, the League Championship Series and the World Series were canceled. The umpires did not receive "Special Events" compensation[3] for the unplayed 1994 post-season

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[3] Article VII(A) of the Collective Bargaining Agreement sets forth the "Special Events" compensation agreement:

> The aggregate amounts to be paid to members of the umpiring staff of the two Leagues as compensation for providing services with respect to Special Events shall be as follows:
>
> (1) All members of the umpiring staff of the two leagues in their first through fifth years of service shall receive $10,000.
>
> (2) All members of the umpiring staff of the two Leagues in their sixth or greater years of service shall receive $20,000.
>
> ---
>
> (4) All umpires who work in the League Championship Series and the World Series shall receive $5,000.

games. Under the Collective Bargaining Agreement, "Special Events" compensation included so-called "pool payments" – a fixed amount related to the umpire's years of service – and "working money" – a fixed amount for each post-season series worked. *See* Art. VII(A)(4), *supra* note 1. The total "special Events" compensation claimed to be due is $755,000 for the American League umpires and $685,000 for the National League.[4]

Following denial of its grievance, plaintiff demanded arbitration before the American Arbitration Association pursuant to Article XV of the Collective Bargaining Agreement.[5] On October 7, 1996, the arbitrator returned the following decision: (1) The umpires were not entitled to Special Events "pool payments" or "working payments" for post-season games not played; (2) the umpires were entitled to a portion of "pool payments" for the 1994 All-Star Game; and (3) the apportionment formula established by President Nixon in arbitrating a similar dispute

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> Note: Should the Leagues institute a Division Series . . . the Leagues agree to pay members of the umpiring staff of the two leagues, as additional compensation . . . $7,500 times the number of umpires who work the Division Series.

[4] These calculations are based on Art. VII.

[5] Art. XV states, in part:

> In the event of a dispute concerning a claimed violation of the provisions of this Agreement by either party thereto the matter shall be referred to the League President involved and a representative of the Association; and if agreement is not reached by these two individuals within ten days the matter shall be referred to an arbitrator mutually agreed upon as sole neutral arbitrator to finally determine the matter.

between the parties in 1985 was appropriate for allocating the 1994 All-Star Game "pool payments."[6] Arb. Op. and Award at 34-35. Applying this formula, umpires with up to five years of service were awarded $728.44 and with six years or more, $1,394.44, as "pool" money.

On this appeal, plaintiff's contention is that the arbitrator exceeded his authority by disregarding the specific questions submitted for arbitration. The issue presented was whether the umpires provided services with respect to "Special Events" or, in the alternative, whether Article VII pay is "salary" as that term is used in Article XIV. *Id.* Stip. Record, ex. 10.[7]

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[6] In 1984, "pool payments" were introduced by then Baseball Commissioner Peter V. Ueberroth. The 1985 arbitration resolved a dispute over the amount of additional compensation umpires should receive when the League Championship Series was extended from five to seven games. President Nixon held that the "pool payments" should be increased in proportion to the increased work resulting from the expansion of the League Championship Series. Stip. Record ex. 7. Here, the arbitrator applied the formula to reduce the "pool payments" in proportion to the reduction in work in "Special Events" caused by the players' strike. *See* Arb. Op. and Award at 35.

[7] In the arbitration, plaintiff's position was that under the Collective Bargaining Agreement, the umpires were owed "Special Events" pay regardless whether the games were played. Citing Art. XIV, the "strike clause," it maintained that all forms of "salary" were continued during a strike or lock-out, including "Special Events" compensation under Art. VII. The arbitrator agreed with defendant that "no work, no pay" was plainly stated in Art. VII and that "Special Events" compensation is not a salary. He also approved the Nixon

II. Discussion

The familiar rule is that "federal policy in favor of settling labor disputes by arbitration requires that courts refrain from reviewing the merits of arbitration awards." *United Parcel Serv. v. Local 430, Int'l Brotherhood of Teamsters*, 55 F.3d 138, 141 (3d Cir. 1995) (*citing United Steelworkers v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 596, 80 S. Ct. 1358, 1360, 4 L. Ed. 2d 1424 (1960)). To do otherwise would be to "render the arbitrator's decision meaningless, and would annul the decision of the parties to have an arbitrator construct their collective bargaining agreement, a decision which they bargained for." *Enter. Wheel*, 363 U.S. at 596, 80 S. Ct. at 1360.

So long as the arbitrator's award is "drawn from the essence" of the collective bargaining agreement, it is enforceable.[8] On appeal, a court should not substitute its

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compensation formula, which was consistent with the Leagues' position.

Art. XIV reads:

> In the event some part or all of a championship season is not played because of a strike or lock-out involving the players, each umpire shall be paid his salary of seventy-five (75) days. The arrangement or umpire pay during a strike or lock-out provided by this agreement shall be applicable during the term of the agreement. The period of player strike or lock-out shall be calculated as beginning on the first day of such strike or lock-out and ending on the day play resumes.

[8] *United Parcel Service*, 55 F.3d at 141; *Stroehmann Bakeries v. Local 776*, 969 F.2d 1436, 1441 (3d Cir. 1992); *Penntach Papers v. United Paperworkers Int'l Union*, 896 F.2d 51, 52 (3d Cir. 1990); *Super-Tire Eng. v. Teamsters Local Union*, 721 F.2d 121, 122-124 (3d

views even if it disagrees with the award, or finds the basis for it to be ambiguous.[9] Only a manifest disregard of the parties' agreement or of the law will require a reviewing court to intrude upon the "province of the arbitrator."[10] *United Transp. Union Local v. Suburban Transit Corp.*, 51 F.3d 376, 379 (3d Cir. 1995); *see United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 40, 108 S. Ct. 364, 371, 98 L. Ed. 2d 286 (1987) ("but as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision").

Here, plaintiff contends that the arbitrator, by resolving the dispute in a manner not contemplated in the

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Cir. 1983); *Ludwig Honold Mfg. Co. v. Fletcher*, 405 F.2d 1123, 1125 (3d Cir. 1969).

[9] *W.R. Grace and Co. v. Local Union 759*, 461 U.S. 757, 764, 103 S. Ct. 2177, 2182, 76 L. Ed. 2d 298 (1983); *Stroehmann*, 969 F.2d at 1441; *see also United Transp. Union Local v. Suburban Transit Corp.*, 51 F.3d 673, 679 (3d Cir. 1995) ("even when the award was dubious, and the result on that we would not have reached had the matter been submitted to the court originally, we have upheld the arbitrator's decision").

[10] An exception to this general rule of broad deference also exists where the arbitrator's award is contrary to public policy. *Stroehmann*, 969 F.2d at 1441 (*citing W.R. Grace*, 461 U.S. at, 766, 103 S. Ct. at 2183. However, the public policy must be "well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests." *Id.* Presumably, no "well defined and dominant" public policy exists to support the payment of umpires for unplayed games. None has been offered; and Art. VII of the Collective Bargaining Agreement is to the contrary.

collective bargaining agreement, went beyond his authority. As our Circuit has held, "an arbitration award will be enforceable only to the extent it does not exceed the scope of the parties' submission." *Matteson v. Ryder System, Inc.*, 99 F.3d 108, 112 (3d Cir. 1995) (*citing United Parcel Service*, 55 F.3d at 142). Nevertheless, "the deference that is accorded to an arbitrator's interpretation of the collective bargaining agreement should be accorded to an arbitrator's interpretation of the issue submitted." *Mobil Oil Corp. v. Indep. Oil Workers Union*, 679 F.2d 299, 302 (3d Cir. 1982). Unless there is "absolutely no support" in the record, the arbitrator's interpretation must be respected and upheld. *News America Publications, Inc. v. Newark Typographical Union, Local 103*, 918 F.2d 21, 24 (3d Cir. 1990).

The arbitrator determined that Article XIV of the Collective Bargaining Agreement, concerning salary in case of a strike or lock-out, is controlling because it "fits" the specific facts of the parties' dispute. Arb. Op. and Award at 30. He also concluded that because there was no provision for additional compensation for post-season games in the event of a player strike or lock-out, there must not have been "a meeting of the minds" as to this issue. *Id.* at 31. He reasoned that compensation due under Article VII does not fall within the category of "salary" under Article XIV. Instead, it is additional compensation. Therefore, the umpires were not entitled to such payment since the post-season games were canceled. *Id.* at 34. A portion of "pool money" was awarded solely for the All-Star Game at which six umpires had officiated. *Id.*

Plaintiff complains that the "pool money" formula adopted by the arbitrator was outside the scope of his

authority, since it was not part of the agreement – and was derived from another arbitration nine years earlier. This type of resolution, however, can be supported. *See Penntach Papers*, 896 F.2d at 52 (arbitration did not depart from the essence of the collective bargaining agreement in relying on the precedent from a prior similar incident). Here, by analogy to the Nixon formula, the arbitrator linked pay with work in a manner that drew its essence from the Agreement. *See United Transp. Union Local*, 51 F.3d at 379 (arbitrator's interpretation that the term "proper cause" for discharge required progressive discipline had some basis in the agreement). Because the decision was a reasonable interpretation of the agreement and the parties' intent, the arbitrator's award cannot be said to have been a manifest disregard of the agreement or the law. *See Ethyl Corp. v. United Steelworkers*, 768 F. 2d 180, 186 (7th Cir. 1985) ("as long as a plausible solution is available within the general framework of the agreement, the arbitrator has the authority to decide what the parties would have agreed on had they foreseen the particular item in dispute") (citing *Desert Palace, Inc. v. Local Joint Exec. Bd.*, 679 F.2d 789, 793 (9th Cir. 1982).

Plaintiff refers to several labor arbitration cases for the proposition that where there is no pertinent "meeting of the minds" in a collective bargaining agreement, the dispute is not arbitrable. *See, e.g., Nat'l Cleaning Contractors, Inc.*, 70 L.A. 917, 925 (1978) (where arbitrator does not find mutual intent, unless commonly understood usage is available, arbitrator cannot make decision).[11]

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[11] Plaintiff's reliance on *A.M. Castle & Co. v. United Steelworkers of America*, 898 F. Supp. 602 (N.D. Ill. 1995) is

Here, however, the parties had agreed to utilize arbitration to resolve their disputes. As such, the arbitrator was empowered to decide the disputed issue in a manner consistent with the language of the agreement. The Court of Appeals for the Seventh Circuit has germanely observed:

> "Even if . . . there was no 'meeting of the minds' on [a term of the agreement], there was a meeting of the minds on the mode of arbitrating disputes between parties arising from any collective bargaining contract . . . A contract dispute is arbitrable even if one party argues that the contract should be rescinded because it does not express an actual agreement of the parties, for example, it was induced by fraud. *All that is important is that the parties have agreed that arbitration rather than adjudication would be the mode of resolving their disputes.*"

A.M. Castle, 898 F. Supp at 607 (emphasis added) (*citing Colfax Envelope Corp. v. Local 458-3M*, 20 F.3d 750, 755 (7th Cir. 1994)); *see also Gateway Coal Co. v. United Mine Workers of America*, 414 U.S. 368, 378, 94 S. Ct. 629, 639, 38 L. Ed. 2d 583 (1974) ("A collective bargaining agreement cannot define every minute aspect of the complex and

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misplaced. There, it was held that an arbitrator does not have authority to interpret a latent as opposed to a patent ambiguity. A latent ambiguity occurs when "the parties agree to terms that reasonably appear to [both] of them to be unequivocal but are not." A patent ambiguity occurs when "the ambiguity arises from the language itself." However, as stated in *A.M. Castle*, even a latent ambiguity "does not strip the arbitrator of his authority because it is a question of interpretation, not of formation." *Id.* at 611, n.9.

continuing relationship between the parties. Arbitration provides a method for resolving the unforeseen disagreements that inevitably arise"). Even "assuming *arguendo* that the arbitrator actually concluded the parties reached no 'meeting of the minds' . . . such a finding does not prohibit the arbitrator from interpreting the provision." *Johnson Controls v. United Ass'n of Journeymen*, 39 F.3d 821, 825 (7th Cir. 1994).

Given these percepts, it cannot be said that the arbitrator's interpretation was devoid of a reasoned basis. "If the interpretation can in any rational way be derived form the agreement, viewed in light of its language, its context, and any other indicia of the parties' intention," it will be enforced. *United Transp. Union Local*, 51 F.3d at 379. The arbitrator's decision was founded upon the collective bargaining agreement and the plain meaning of its terms. Accordingly, plaintiff's motion for summary judgment must be denied and defendants granted judgment as a matter of law – regardless of the arguable desirability of the result.

/s/ Edmund V. Ludwig
Edmund V. Ludwig, S.J.

AMERICAN ARBITRATION ASSOCIATION
CASE NO. 14 300 00028 95J
ARBITRATION OPINION AND AWARD
RICHARD R. KASHER, ARBITRATOR
OCTOBER 7, 1996

In the Matter of an Arbitration Between

THE MAJOR LEAGUE UMPIRES' ASSOCIATION

and

THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS

and

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS

Appearances

William H. Schweitzer, Esquire
Brian S. Harvey, Esquire
Baker & Hostetler
for the Professional Baseball Clubs

Patrick C. Campbell, Jr., Esquire
Richard G. Phillips Associates, P.C.
for the Umpires' Association

Introduction

The National and American Leagues of Professional Baseball Clubs (hereinafter the "Employer" or the "Leagues") and the Major League Umpires' Association (hereinafter the "Association" or the "Umpires") are parties to a collective bargaining agreement which governs

the salaries, additional compensation, benefits and working conditions of the League's Umpires.

The Association processed a grievance regarding the Leagues' alleged failure to pay the sixty-four American League and National League Umpires compensation referred to by the parties as "pool" payments for 1994 post-season. When the matter could not be resolved directly during handling in the grievance procedure, the Association filed a demand(s) for arbitration with the American Arbitration Association. As a result of that demand(s) an arbitration hearing was held on May 28, 1996 at the American Arbitration Association's offices in Philadelphia, Pennsylvania.

At said hearing, which was transcribed, both the Association and the Leagues were represented by counsel who were afforded a full opportunity to present relevant evidence through the testimony of witnesses and in documentary proofs. A broad range of cross-examination was permitted, and counsel raised points and contentions in support of their respective positions in post-hearing briefs.

Background Facts

The parties stipulated to the following facts:

1. The Association is the bargaining representative for Major League Baseball Umpires,

2. The Umpires are employed by the American and National Leagues' Professional Baseball Clubs.

3. Each League is an unincorporated association which is comprised of the Major League Baseball Clubs in that respective league.

4. The Association and the Leagues were parties to a collective bargaining agreement that was in effect from January 1, 1991 through December 31, 1994.

5. The 1994 regular season for the Leagues commenced on or about April 4, 1994, and was scheduled to conclude on or about October 1, 1994.

6. The post-season, consisting in 1994 of the best-of-five Division Series, the best-of-seven League Championship Series and the best-of-seven World Series, was scheduled to commence on or about October 4, 1994 and to conclude no later than October 30, 1994. The parties' collective bargaining agreement provided that each of the above described events requires a crew of six (6) umpires for each game, which crew remains together for an entire series.

7. The 1994 All Star Game was held on July 12, 1994 in Pittsburgh, Pa. and was officiated by Umpires Paul Runge, Gerry Layne, Bill Hohn, John Shulock, Rocky Roe and Jim Joyce.

8. The 1994 season was interrupted on August 12, 1994 by a strike by the Major League Baseball Players' Association which is the exclusive bargaining representative for baseball players at the major league level. On August 15, 1994 the Leagues announced cancellation of games due to the Players' strike.

9. On September 14, 1995, as a result of the Players' strike, the owners of the Clubs

decided not to continue to use replacement players and the 1994 championship season and all of the post-season events were cancelled.

10. On September 14, 1995, the Clubs, acting through the Office of the Commissioner, issued an announcement of the cancellation of the remainder of the 1994 season on account of the Players' strike.

11. As of the 1994 season Umpires listed in the stipulation had varying years of service for the purpose of Article VII of the parties' collective bargaining agreement.

12. On January 13, 1995, Major League Baseball's executive council adopted guidelines regarding the use of replacement players if the current major league players did not report to spring training camps.

13. In a prepared statement that was made in conjunction with the announcement of the resolution, the Acting Commissioner of Major League Baseball, Allarn H. "Bud" Selig, Chairman of the Major League Baseball Executive Council stated "We continue to remain hopeful that we will reach a negotiated settlement with the players union and begin spring training with our regular players. However, we are committed to playing the 1995 season and will do so with the best players willing to play."

14. Preparations ware then made by a number of clubs for the possibility that it could be necessary to play the 1995 season with replacement players.

Mr. Richard G. Phillips, who has served as the Association's General Counsel for the past twenty years, testified regarding the various forms of compensation to which Umpires are entitled under the terms of the parties' collective bargaining agreement. Mr. Phillips focused his testimony upon the "Special Events" compensation received by Umpires, and described the manner in which compensation was divided for the World Series, American and National League Championship Series, the Divisional Series and the All Star Game. Mr. Phillips testified that in 1994 there were to be forty-eight possible assignments of Umpires to these Special Events.

Mr. Phillips testified regarding the Association's view concerning the proper application of Article VII of the collective bargaining agreement which was in effect at the time that 1994 post-season was cancelled.

Article VII provides as follows:

> **VII. *ADDITIONAL COMPENSATION FOR SPECIAL EVENTS AND EXHIBITION GAMES***
>
> **A. *Additional Compensation-League Championship and World Series***
>
> **The aggregate amounts to be paid to members of the umpiring staff of the two Leagues as compensation for providing services with respect to Special Events shall be as follows:**
>
> **1. All members of the umpiring staff of the two Leagues In their first through fifth years of service shall receive $10,000;**
>
> **2. All members of the umpiring staff of the two Leagues in their sixth or greater year of service shall receive $20,000;**

3. All umpires who work in the All Star Game shall receive $2,500;

4. All umpires who work in the League Championship Series and World Series shall receive $5,000.

If an umpire fails to work a Special Event to which he is assigned, he shall not be entitled to, nor receive, any amounts of additional compensation otherwise due to be paid to him as provided for in Sections A(l)-A(4) hereof, unless such failure is due to health, Injury or other good cause. The amounts to which he would otherwise have been entitled shall be distributed equally among the other members at the umpiring staff of the two Leagues.

All payments under this section shall be made on or before November 15th of the respective year,

NOTE: Should the Leagues institute a Division Series (in any format) during the term of this Agreement, the Leagues agree to pay the members of the umpiring staff of the two Leagues as additional compensation for providing services with respect to such Division Series, a total amount equivalent to $7,500 times the number of umpires who work the Division Series. This aggregate amount shall be divided as follows:

(a) The umpires who work in the Division Series shall receive the same amount of payment that umpires receive in that year for working in the World Series and League Championship Series as provided for in Section A(4) hereof; and

(b) The balance shall be distributed among all members of the staff on an equal basis.

B. *Additional Compensation-Divisional Ties*

Each umpire assigned to officiate at games to decide divisional ties shall be paid $1,500.

C. *Additional Compensation-Exhibitions*

Umpires working exhibition games during the season will receive $125 for each game.

Mr. Phillips testified that the payments made pursuant to Article VII-A.1. and 2. have been referred to by the parties as "pool" payments, and that this compensation was first made part of the Umpires' collective bargaining agreement as the result of an arbitration award issued by Baseball Commissioner Peter V. Ueberroth in 1984. Mr. Phillips testified that Commissioner Ueberroth "established a pool which had never been established before, a post-season pool to be distributed amongst all members of the bargaining unit." Mr. Phillips testified that Commissioner Ueberroth concluded that a "general increase in compensation to all Umpires (utilizing the pool concept), whether they were assigned to work a post-season event or not, was warranted"; and that Commissioner Ueberroth so advised former President Richard M. Nixon in a letter dated October 21, 1985 at the time that President Nixon was serving as an arbitrator in a dispute between the Umpires and the Leagues.

Mr. Phillips testified that subsequent to Commissioner Ueberroth's establishment of the "pool concept" the parties entered into a memorandum of understanding on November 20, 1984, which memorandum was prepared by the Leagues. Mr. Phillips testified that this

memorandum of understanding established aggregate amounts for the years 1984, 1985 and 1986 of $405,000, $465,000 and $525,000, respectively, to be paid to the Umpires as "pool" payments; and that in the January 1, 1987 collective bargaining agreement the parties agreed that pool payments for the years 1987, 1988, 1989 and 1990 would be $800,000 each year.

Mr. Phillips testified that the language "The aggregate amount to be paid to members of the umpiring staff of the two Leagues as compensation for providing services with respect to Special Events", the preamble to the pool payment schedule, was drafted by Mr. Robert Kheel, the League's Chief Negotiator; and the language "for providing services with respect to Special Events" was "inserted" by Mr. Kheel based upon the concerns of League Presidents Bobby Brown and Bart Giamatti.

Mr. Phillips testified that American League President Brown had stated that he was concerned that "umpires were receiving so much for not doing anything" and that "he wanted something in there [the collective bargaining agreement] that they had to provide services."

Mr. Phillips testified that League President Brown and Chief Negotiator Kheel had recognized that Special Events compensation, particularly the pool payments, were "nothing more than salary", and that, in his opinion, "there is no obligation on the part of the umpire to do anything in order to receive it [the pool payment]." Mr. Phillips testified that Mr. Kheel has consistently, during the course of the parties' negotiations, referred to the "pool money" as salary.

On cross-examination, Mr. Phillips testified that Article II of the 1991 collective bargaining agreement, captioned *Annual Salaries*, contains the salary schedule for Umpires based upon years of service, and that the word "bonus" does not appear in that Article of the collective bargaining agreement or in Article VII of the 1991 agreement which is captioned *Additional Compensation for Special Events*. Mr. Phillips also testified that the word "bonus" does not appear in Article XIV of the 1991 collective bargaining agreement, which is captioned Effect of Players' Strike or Lockout.

Robert Kheel, Esquire testified that he initially became involved as a representative for the Leagues in dealing with "umpire matters" in 1972. Mr. Kheel testified that Umpires signed individual employment contracts up and until approximately 1978; and that those contracts established an umpire's regular season salary and additional compensation "for the additional work of umpires who are assigned, or were assigned to the post season." Mr. Kheel testified that in 1979 the Leagues determined to rely exclusively upon a collective bargaining agreement for establishing the terms and conditions of employment for Umpires. Mr. Kheel testified, as did Mr. Phillips, that "pool pay" came into existence as a result of Commissioner Ueberroth's decision in 1984.

Mr. Kheel testified that he was the Chief Negotiator for the Leagues during the negotiations which led to the 1987 collective bargaining agreement; and that because there were five separate documents "that bore upon the collective (bargaining] relationship" between the Leagues and the Umpires, he "cut and paste" the various sections

of these documents in order to present a single, integrated proposed agreement which the parties might use for the basis of their negotiations.

Mr. Kheel testified, regarding language in Article VII of the 1987 collective bargaining agreement, that he added the phrase "for providing services with respect to" to the introductory language in Article VII; and that the intent of this phrase was to "tie pay to work". Mr. Kheel testified that the Association "wanted to raise the pool very dramatically", and that the aggregate number eventually agreed upon was $800,000 and that that amount of money would be placed in the pool for each year beginning in 1987 and running through 1990. Mr. Kheel testified that the Association, at the same time that it sought to increase the aggregate dollars in the pool, agreed to "the workers' numbers [being] dropped dramatically. . . . " Mr. Kheel testified that this rearrangement of the dollars for special events created "a very serious potential concern" for the Leagues; because it was feared that "the umpires would say, thank you, we'll take the pool and go home", and in those circumstances the League "wouldn't have any workers, because the incentive would just not have been there". Mr. Kheel testified that because of this concern it was the Leagues' intention to "directly [tie] the pool to the rendition of services".

Mr. Kheel testified that the Leagues were concerned about the Umpires providing services during the postseason and "wanted to make sure the Association was on board with guaranteeing that the Umpires in fact would work, given the low incentive economically. . . . " Mr. Kheel testified that, because of this concern, the Leagues "asked for and got a side letter" from General Counsel

Phillips dated June 30, 1987 which provided, relevantly, as follows:

> **Due to the fact that the Association insisted on a revised approach to Special Events compensation for the term of this Agreement about which the Leagues had serious reservations, the Association guarantees that the Association will use Its best efforts to ensure that all umpires will render services in the Special Events to which they are assigned and that the new Article VII allocation formula does not cause undue difficulties.**

Mr. Kheel testified that during the negotiations he raised a concern that because of the rearrangement of "worker pay" and "non-worker pool payment" that an umpire who was assigned to work a Special Event "may decide to go fishing"; and "the issue came up not only would he lose the worker pay but he'd lose the pool because we wanted to make him – or incent him, I guess is the better word, to make him work."

Mr. Kheel testified that Special Events compensation is not included in Article XIV, *Effect of Players' Strike or Lockout*, and that the Association did not demand that Special Events compensation be included in this Article.

Article XIV, Effect of Players' Strike or Lockout, provides as follows:

> **In the event some part or all of a championship season is not played because of a strike or a lockout involving the players, each umpire shall be paid his salary for 75 days. The arrangement for umpire pay during the player strike or lockout provided by this agreement shall be applicable during the term of the**

agreement. The period of player strike or lockout shall be calculated as beginning on the first day of such strike or lockout and ending on the day play resumes.

Mr. Kheel testified that the Leagues and the Association "have always treated salary and special events compensation separately".

Mr. Kheel testified that, while the "salary amounts were increased" as a result of the 1991 negotiations, the "basic structure" of Article VII did not change,

Mr. Kheel testified that as a result of the players' strike in 1994 large numbers of employees on the club level were furloughed or "let go"; and that the Umpires were paid their salary "through the end of the year because it's an annualized salary."

Mr. Kheel testified that in 1985 the American and National Leagues increased their five game League Championship Series (hereinafter the "LCS") to a seven game schedule; and that the Association then argued that as additional work was being rendered by the umpiring crews who worked the LCS that the Umpires were entitled to additional pay for the additional two games. Mr. Kheel testified that the parties disputed "how much that something [the compensation] should be", and that the Association also maintained that the increased work in the LCS justified an increased payment to the pool for the "non-workers". Mr. Kheel testified that these issues were presented to former President Richard Nixon who was

serving as arbitrator and that he "agreed with that concept", that is, that "the percentage of increased pay attributable to the increased work [would be] used [and] that same percentage [would] inflate the pool payment. . . . "

On cross-examination, Mr. Kheel testified that the term "pool" does not appear in the collective bargaining agreement; that the agreement does not state in "precise words" that "if the Leagues decide not to hold the League Championship Series, the world Series or Divisional Series that they're [the Leagues] entitled to withhold Special Events compensation"; although it was Mr. Kheel's "legal position" that the Leagues do have that right. Mr. Kheel testified that the "strike pay provision" in Article XIV of the agreement, which provides for "strike continuation pay", first appeared in the 1977 collective bargaining agreement.

Continuing on cross-examination, Mr. Kheel testified that it was "physically impossible to use every umpire on the staff in connection with the Special Event[s]". Mr. Kheel testified that the purpose of his using the term "providing services" was to "purchase a pool of services, not any individual service. . . . " Mr. Kheel testified that he "downplay[ed] the significance of the All Star Game in the scheme of . . . Special Events", because "the All Star Game is not a competitive event [in] the way the postseason is", and because Mr. Phillips and the Umpires had conveyed to the League Presidents "how stressful postseason work is because it's highly competitive, highly visible, whereas the All Star Game is an exhibition game," Mr. Kheel testified that the words "no work, no pay" do not appear in the collective bargaining agreement.

Mr. Phillips was recalled as a rebuttal witness and testified that, in his opinion, the term "provide services for" in Article VII did not deprive the umpire staff from receiving the pool payments. Mr. Phillips testified that if "all six Umpires that were assigned to the World Series did not appear on opening day [of the World Series] . . . that in no way under this agreement would have an adverse effect on any umpire other than those six, and, in fact, it would have a positive effect on them [the umpires who were not assigned to the World Series]." Mr. Phillips testified that in the circumstances he just described the individuals who did not "show up would be penalized", and that they would not participate in the "pool" or "bonus"; and thus their shares of the pool/bonus would be distributed "to all the other umpires". Mr. Phillips testified that the Leagues were not guaranteed "anything" by the language of Article VII, and that all that was contemplated was that if an umpire refused to work that umpire should be penalized. Mr. Phillips testified that the Association did not provide the Leagues with a guarantee that there would be a "work force" for the Special Events, as the Leagues had asked for, but did agree that an umpire, who without good cause failed to work a Special Event to which he was assigned, would not receive Special Events compensation. Mr. Phillips testified that the Umpires, as a group, "were not mandated to provide services, they got money whether they provided services or not"; and that the Umpires would receive pool payments as "most of the umpires" were not assigned to Special Events and they were to receive pool payments irrespective of whether

they were assigned to a Special Event. Mr. Phillips testified that the decision by Commissioner Ueberroth "awarded the pool to everyone of [the umpires]"; and that this principle is embodied in Commissioner Ueberroth's October 21, 1985 letter to President Nixon in which he stated that he had "ultimately determined that a general increase in compensation to all umpires (utilizing the pool concept), whether they were assigned to work a post-season event or not, was warranted." Mr. Phillips testified that this concept has been "followed ever since." Mr. Phillips testified that the Association's position in the arbitration before President Nixon was "simply that we want more money or we have a right not to work."

The issue before the Arbitrator is whether the 1994 umpiring staff is entitled to the Special Events compensation described in Article VII.A.1. and 2. of the collective bargaining agreement.

Position of the Association

The Association submits that Article VII provides for certain bonus payments which are payable on November 15 of each year, and that the second part of Article VII provides for payments depending upon the Special Event to which an Umpire is selected to officiate.

The Association maintains that, conceptually, pool money has always been treated as a form of compensation, and that it had its genesis in the 1984 award issued by Commissioner Ueberroth. The Association points out that Commissioner Ueberroth characterized pool money as a "general increase in compensation"; and argues that this concept of increasing Umpires' compensation "by the

pool has been further bolstered in subsequent bargaining agreement negotiations" between the parties. The Association maintains that Article II, *Salary*, and Article VII pay have always been "lumped together for bargaining purposes with the issue of allocation left to the Association." The Association argues that there is no conceptual or contractual basis to treat Article VII pay separate from any other employment benefit or obligation.

The Association asserts that the Leagues' reliance upon the principle of "no work, no pay" is misplaced; and that Mr. Kheel's testimony supports a finding that the term "providing services with respect to" does not condition "pay" for "work", but is simply to guarantee a unit supply of services for the Leagues' Special Events. The Association argues that the Leagues chose to cancel some Special Events in 1994 and, therefore, not to fully use the supply of Umpires. The Association submits that this action does not relieve the Leagues of their obligations under the agreement, as there never was an intention on the part of either party to make the application of Article VII discretionary with the Leagues.

The Association maintains that the phrase "providing services with respect to" was authored by the Leagues, and if the phrase was intended to have the limiting effect of requiring "pay for work" then the Leagues not only had the opportunity to state that specifically but had the obligation to clarify the intended effect. In any event, the Association contends that the "no work, no pay" principle is not applicable in the Umpires' contract, as it is more appropriate in a construction or industrial setting in which wages and benefits are determined solely according to hours of work. The Association points out that the

1991 agreement generally provides for benefits and obligations over a four year term without any reference to "work"; but that in limited circumstances the agreement does provide the Leagues with the right to condition "pay" on "work", such as the reference in Article VII to an umpire who refuses to work a Special Event for reason other than "health, injury or good cause".

The Association addresses Article XIV, the "strike clause", and submits that the only benefits which may be altered, absent a suspension of employment, is "salary"; and that all other benefits must continue during a players' strike. In any event, the Association maintains that the "salary continuation" of Article XIV is not limited to Article II, but includes all forms of "salary", including the pool compensation which Commissioner Ueberroth established as another form of "salary".

Insofar as the arbitration before President Nixon is concerned, the Association submits that the position it urges in the instant case is not inconsistent with the position it maintained before President Nixon.

Citing several arbitration cases, the Association asserts that in construing a written instrument the whole of the document and the true intent of the parties are to be considered and the interpretation of that document does not flow from a single word or phrase alone. The Association also contends that when the language in dispute is susceptible to more than one interpretation then an arbitrator may look to extrinsic evidence to determine the parties' practices and mutual intent. Another rule of contract construction upon which the Association relies is that when doubt exists regarding an ambiguous provision

that doubt must be decided against the author of the provision. In support of this argument the Association cites several additional arbitration cases.

The Association maintains that the Umpires are entitled to Article VII pay as there was no suspension of employment in 1994. The Association submits that the "unit supply of umpires" for which Mr. Kheel bargained in 1991 was available in 1994; and, whether the Leagues decided to use that supply or not, the Umpires were available for the 1994 Special Events and are therefore entitled to Article VII pay. Additionally, the Association points out that the Umpires did work or provide "services with respect to Special Events", as the Umpires worked the All Star Game, the only Special Event which the Leagues chose to conduct in 1994.

Citing from treatises on contracts and decisions or the federal courts, the Association submits that when an employer and an employee have an exclusive services contract, which restricts the employee from rendering services elsewhere during the terms of the agreement, assuming that "pay" is conditioned upon "work", the employer cannot deny the employee the opportunity to work and then deny the employee the benefits of the agreement. The Association points out that the Umpires are not permitted to work for anyone other than the Leagues, and argues, therefore, that the above-cited principle is applicable in the instant case as the Leagues canceled the Special Events. The Association submits that the Leagues had an alternative supply of players in the minor leagues, and thus could have avoided the cancellation of the Special Events and accepted the Umpires' proffer of services. The Association further points out

that the Leagues had adequate notice of the players' strike and could have made arrangements to replace the players and conduct the Special Events.

The Association maintains that Article XIV, upon which the Leagues rely, is not a limiting provision for any right other than "salary". The Association contends that this is the only right of the Umpires which is limited during a players' strike; and that all other rights, *a fortiorari*, remain in full force and effect. In support of this principle, the Association cites an arbitration case involving the flight engineers of *Pan American World Airways*, and submits that the reasoning in that case applies to the facts in the instant case. The Association contends that if the Leagues desired to limit the Umpires' rights to contractual benefits in addition to "salary" as the result of a players' strike then the Leagues could have and should have so stated in the collective bargaining agreement. The Association argues that even if Article VII pay is not considered salary, if the Leagues intended to suspend the Umpires' right to Article VII pay then they should have suspended the Umpires' employment so that, at the least, the Umpires would have been freed from their other employment restrictions.

The Association points out that the term "salary" in Article XIV is not defined in the contract, but that the term generally is defined as "fixed compensation paid regularly (as by the year, quarter, month or week) for services." The Association submits that Article VII pay has always been considered "general . . . compensation", and that it is fixed, non-discretionary and payable at the same point in time each year. The Association points out that the majority of Article VII pay is paid regardless of

whether an Umpire is actually assigned to a Special Event. Thus, the Association maintains that Article VII pay, at least the pool portion of that payment, is not conditioned upon working the Special Event; but is simply an element of an Umpire's base compensation that is paid in a lump sum amount on a specific date after the conclusion of the post-season.

Based upon the foregoing facts and arguments, the Association submits that the grievance should be sustained and that the Umpires should be awarded an amount of $1,440,000.00, plus interest at six percent (6%) retroactive to November 1, 1994.

Position of the Leagues

The Leagues submit that the basic agreement retains management's right to forego extra payment to Umpires for extra Umpire work rendered impossible by the players' strike. The 7 Leagues assert that in the absence of an express contractual guarantee, an employer bears no obligation to pay employees when there is no work for them to perform. The Leagues maintain that the principle of "no-work – no-pay" is fundamental in labor law; and the Leagues cite several arbitration cases in support of these principles. The Leagues further maintain that the principle of "no-work – no-play", absent an express guarantee to the contrary, fully applies when strike conditions necessitate a shutdown.

The Leagues point out that the basic agreement expressly reserves the Leagues Presidents' right to suspend Umpire employment if the baseball season or post-season is interrupted or suspended for any reason. In

support of this assertion, the Leagues rely upon the language in Article XX and Article XVI(1), which, respectively, address retention of rights by the Leagues to conduct their business and the Leagues' right to "suspend employment (subject to Article XIV of this Agreement) during any national emergency or any other period during which his League's training season, regular season, post season, or exhibition schedule may be interrupted or suspended for any reason." The Leagues further point out that Article XIV(1) has been a term or condition of Umpires' employment since the time of the Uniform Umpire's Contract.

The Leagues argue that Special Events compensation is due and owing only upon the rendition of services with respect to Special Events. The Leagues submit that the plain language of the contract establishes that payment is tied to the providing of services. The Leagues rely upon Article VII in support of this argument, which states that payments are "to be paid . . . as compensation for providing services with respect to Special Events"; and point out that this operative language appears at the outset of Article VII(A) and controls the subsequent paragraphs which specify the particular amounts to be paid for the rendition of services associated with Special Events.

The Leagues contend that the history of the parties' negotiations establishes that payment for Special Events is "tied" to the rendition of services. The Leagues point out that the phrase "providing services with respect to" the Special Events was first used by the parties in their 1987 agreement; and that this new language, clarifying the link between payment of Special Events compensation and the provision of services, was motivated by two

factors; the first being the sharp increase in the amount of pool payments to working and non-working Umpires with the concomitant decrease of payments to those Umpires who work the Special Events, and the second being the fact that Umpires had engaged in numerous and repeated work stoppages, many of which occurred during the time of the "premier" events, the post-season games. The Leagues submit that it was for these reasons that the Leagues were concerned that insufficient incentive existed for Umpires to work the post-season games, and thus the language tying Special Events payments to services was introduced. In further support of this contention, the Leagues rely upon the June 30, 1987 side letter to the 1987 agreement in which the Association guaranteed that it would use its best efforts to ensure that all Umpires would render services in the Special Events to which they were assigned; which side letter was also made part of the 1991 agreement.

The Leagues contend that the treatment of the new Division Series confirms that "pool" payments are tied to the performance of work. The Leagues point out that in the 1987 agreement a new "pool" was to be established for the Division Series if such Series were implemented. The Leagues contend that this is further evidence of the parties' intention to tie the pool payments to the overall amount of work performed by Umpires in Special Events, without regard to which Umpires actually performed the increased work.

The Leagues contend that the language of Article VII is clear and precludes "worker" payments to Umpires who did not work in the canceled Division series, League Championship Series or World Series.

The Leagues assert that there is no merit in the Association's contention that "Special Events compensation" constitutes "salary" within the meaning of Article XIV. The Leagues submit that a fair reading of the 1991 agreement, as a whole, demonstrates that Article VII Special Events compensation monies are not "salary". The Leagues point out that Article XIV provides "salary" protection in the event the Leagues exercise their right to "suspend [umpire] employment"; and thus argue that Article XIV provides a limited qualification to the general authority vested in the Leagues in Article XVI(I), a qualification which is applicable only when the League Presidents' authority to suspend Umpire employment must be exercised due to a players' strike. The Leagues contend that Article XIV does not require continuation of other types of payments to Umpires that do not constitute salary.

The Leagues argue that when the parties used the phrase "his salary" in Article XIV they were referring to "salary" as set forth in the "Salary Schedule" in Article II; and that Special Events compensation monies are nowhere characterized as "salary", but are consistently denominated as "compensation". The Leagues submit that the 1991 agreement and the predecessor agreements demonstrate that "salary" and "Special Events compensation" are different terms with different meanings, and that the parties used this nomenclature of payments deliberately for the purpose of distinguishing one form of payment from another.

The Leagues contend that only the payment provided in Article II is called "salary", and is paid in monthly installments over the course of a year without reference

to any specific assignment or event in the baseball season. Thus, the Leagues maintain that Article II, Salary is the only type of payment whose special continuation under Article XIV "for 75 days" makes sense.

The Leagues propose that the 1985 arbitration award by former President Nixon provides a persuasive precedent for interpretation of the pool payment provision of Article VII. The Leagues submit that work in the All Star Game, a non-competitive and exhibition event, is not comparable to post-season work in the Division Series, League Championship Series or World Series; and that viewed on a game-by-game basis, the number of Umpire assignments to the All Star Game is clearly a *de minimus* part of the total Special Events work. The Leagues suggest, in the event the Arbitrator concludes that the playing of the 1994 All Star Game entitles Umpires to a portion of the pool, that the formula used by President Nixon provides a cogent, logical and fair method for establishing the percentage of the pool payments which might be paid to the Umpires.

Based upon the foregoing facts and arguments, the Leagues submit that the grievance should be denied in its entirety, or in the alternative that the Arbitrator apply the method established in the 1985 Nixon Award and award each Umpire with one to five years of service as of 1994 the sum of $728.44 and each Umpire with six or more years of service as of 1994 the sum of $1,394.44.

Findings and Opinion

The parties recognize the same starting point in this case; the "award" of then Commissioner of Baseball Peter

V. Ueberroth. This award was reduced to writing in a Memorandum of Agreement dated November 20, 1984. This award, as the parties have agreed, established the concept of a "pool". While the term "pool" has been used throughout the parties' negotiations since 1984 and regularly referred to in their arguments before this Arbitrator, the word "pool" is not found anywhere within the four corners of he 1991 agreement and has not been specifically defined by the parties.

The best definitions of the word "Pool" which this Arbitrator has found are (1) "a common fund or combination of interests, or the persons contributing thereto, for the common adventure of buying or selling" or (2) "to put together in a pool; to contribute to a common fund, on the basis of mutual division of profits or losses."

Clearly, the "pool" of monies aggregated in Sections VII.A.1. and 2. of the 1991 agreement are designed to be "shared" among all entitled Umpires in specified years. These Sections of the agreement also establish the manner, in terms of amounts, as to how the "pool" is to be shared. So, while the parties adopted the "pool" concept and subsequently negotiated the method(s) for sharing the "pool", they did not specifically address the question of when the "pool" would be shared.

Both the Association and the Leagues rely upon reasonably persuasive arguments regarding the manner in which the pool should be shared. The Leagues contend that the pool is only to be shared upon the rendition of services in the post-season, while the Association argues that the pool is part of Umpires' compensation and is payable in circumstances when the Umpires are ready

and willing to provide services during a particular post-season.

Without denigrating the award of Commissioner Ueberroth, it is significant to note that his award was not accompanied by an opinion, an opinion which might have provided the rationale as to the basis upon which he determined (1) that the pool should be established, (2) how the pool should be shared and/or (3) when the pool would be payable. The circumstances surrounding the issuance of Commissioner Ueberroth's award explain, to some extent, why the award was unaccompanied by any elucidating rationale. The award of the pool occurred in the context of what is commonly referred to as an "interest arbitration". In such cases it is not required that the interest arbitrator explain the bases upon which he/she determined the new wages, rules and working conditions applicable to the members of a bargaining unit; and, frequently, such explanations do not accompany an interest arbitration award. Additionally, the evidence in the record in this case supports a finding that Commissioner Ueberroth was essentially concerned with establishing a level of sufficient additional compensation for the Umpires in order to ensure "industrial peace" during post-season events.

Just as the term "pool" is not found or defined in the collective bargaining agreement, the words "bonus" and "guarantee" do not appear in the parties' contract. The essence of the Association's claim is that the Umpires are guaranteed the additional compensation referenced in Sections VII.A.1. and 2., except in circumstances where the Umpires fail to work the Special Events without "good cause". While the Association has not specifically

used the term "guarantee", the position of the Association would require a finding that the dollars in the pool are guaranteed, either based upon the language of Article VII or, in the alternative, as part of the Umpires' "salary".

Guarantees in collective bargaining agreements are, ordinarily, due and payable regardless of supervening conditions or events. Employees in an industrial setting are frequently "guaranteed" a forty hour work week. Pilots and flight attendants are ordinarily guaranteed seventy to eighty monthly hours of pay irrespective of whether they are able to fly that many hours in a particular month. Those guarantees, as well as all other guarantees with which this Arbitrator is familiar that are found in collective bargaining agreements, are established by specific language. There is no such language in the 1991 agreement, or in the parties' predecessor agreements, which would lead this Arbitrator to conclude that regardless of any supervening event Umpires are guaranteed the pool payments referenced in Sections VII.A.1. and 2.

While the parties have placed great emphasis upon the meaning and interpretive impact of the phrase "providing services with respect to", which phrase was first introduced into agreement language in 1987 by Mr. Kheel in the provisions regarding Special Events, it is this Arbitrator's finding that Article XIV is the critical and controlling provision in this dispute. That Article of the collective bargaining agreement is controlling, in this Arbitrator's opinion, because it "fits" the specific facts which gave rise to the instant dispute. Article XIV, *Effect of Players' Strike or Lockout*, provides in its entirety as follows:

> In the event some part or all of a championship season is not played because of a strike or a lockout involving the players, each umpire shall be paid his salary for 75 days. The arrangement for umpire pay during the player strike or lockout provided by this agreement shall be applicable during the term of the agreement. The period of player strike or lockout shall be calculated as beginning on the first day of such strike or lockout and ending on the day play resumes.

There is no question that the 1994 post-season terminated either because of a "player strike or lockout". Accordingly, as the parties specifically addressed what would happen in the event of such a circumstance, this Article of the collective bargaining agreement establishes the parties' respective rights and obligations. The Leagues are obligated to pay "each umpire . . . his salary for 75 days." There is no reference in this Article to the *Additional Compensation for Special Events and Exhibition Games*, which is the subject matter of Article VII. Had the parties agreed that all or part of the pool payments established in Article VII would be paid to Umpires in the event of a players' strike or lockout then such language would have appeared either in Article VII or, more appropriately and logically, in Article XIV. No such language appears, and thus this Arbitrator must conclude that there was no meeting of the minds regarding the Umpires' entitlement to "Additional Compensation for Special Events" in the event of a players' strike or lockout.

The issue then becomes whether the Article XIV "salary" to be paid to "each umpire . . . for 75 days" includes the pool compensation referenced in Article VII. For a

number of reasons, this Arbitrator concludes that it does not. "Salary" and "compensation" are terms of art when they appear in a collective bargaining agreement. Normally, collective bargaining agreements deal with "wages" for so-called "hourly-rated" employees. However, the term "salary" also appears in many collective bargaining agreements, particularly agreements involving professional sports. Players are typically "salaried", just as are the Umpires whose claims are here under consideration. Salary is a term frequently used in collective bargaining agreements. "Salary" has been defined as "the recompense or consideration paid, or stipulated to be paid, to a person at regular intervals for services; fixed regular wages, as by the year, quarter or month." Thus, "salary" is, frequently, only one element of an employee's compensation in the context of the monetary benefits of a collective bargaining agreement.

A cursory analysis of the parties' 1984 Memorandum of Agreement discloses how much more encompassing the scope of "compensation" is than the element of "salary" Subparagraph A of that Agreement addresses Special Events in two subsections, *Compensation* and *Assignment*. Subparagraph D is entitled *Spring Training*, and provides that for the 1986 season each Umpire "shall receive $100 for each spring training game worked." That $100 is not included in Subparagraph I, *Annual Salaries*, however there can be no doubt that this remuneration constitutes "compensation". Section 3 of Subparagraph D provides that Umpires shall be paid during 1986 the "sum of $515" for use of automobiles during spring training. There can be no doubt that this $515 constitutes compensation, not only in the broad, general context of the

collective bargaining agreement, but also consistent with generally accepted accounting principles. Subparagraph E provides for a *Regular Season Per Diem* and Subparagraph F, *Crew Chiefs*, provides that "Each crew chief will receive a payment of $3,000 in 1986." These subparagraphs contain additional elements of compensation, and are not incorporated in the Annual Salary Schedule which was attached to the 1984 Memorandum of Agreement. As noted above, Subparagraph I, *Annual Salaries* establishes a "salary schedule" for each Umpire ranging from $30,000 for an Umpire in his first year of service to $80,000 for an Umpire in his twenty-fifth year of service.

Clearly, the various elements of compensation which the parties specifically enumerated in the various subparagraphs of their 1984 Memorandum of Agreement were not incorporated in the "salary schedule", although those varying payments were clearly due upon the occurrence of certain events.

In his October 21, 1985 letter to former President Richard Nixon Commissioner Peter V. Ueberroth wrote as follows:

> I have been advised that questions may arise in the current arbitration proceeding as to the conclusions reached in my consideration last year of the dispute between the Major League Umpires and the Leagues.
>
> It is important to note at the outset that I undertook that arbitration during my first week as Baseball Commissioner facing the possibility of not having the regular umpires work in the World Series. I ultimately determined that a general increase in compensation to all umpires

> (utilizing the pool concept), whether they were assigned to work a post-season event or not, was warranted. I felt my decision was a fair one given the then-current compensation levels of the umpires and their contribution to the game. I did not base my determination upon an analysis of club television revenues or any other revenues available to clubs.

At the time that Commissioner Ueberroth issued his arbitration decision and at the time he wrote former President Nixon on October 21, 1985 Umpires were recipients of salaries in accordance with an established, negotiated salary schedule. Commissioner Ueberroth must be presumed to have known that Umpires were entitled to specific annual salaries, when he determined to grant the Umpires "a general increase in compensation"; he did not amend the salary schedule, although, apparently, as an interest arbitrator he had the authority to do so.

Thus, when this Arbitrator is faced with determining what "compensation" is due to the Umpires as a result of the cancellation of the 1994 post-season because of the players' strike the language of Article XIV limits recovery to the specific terms of that Article; that is, "each umpire [is entitled to] be paid his salary for 75 days." As the compensation in Article VII does not fall within the definition of "salary", and as the parties have seen fit to recognize Article VII compensation as "additional", this Arbitrator is constrained to conclude that the pool monies referenced in Sections VII.A.1. and 2. were not due and payable as a result of the cancellation of the 1994 post-season.

However, the Umpires were available and provided services during one of the Special Events, the All Star Game. In these circumstances, they are entitled to a portion of the pool monies associated with that Special Event. This Arbitrator adopts the formula established by former President Richard Nixon and concludes that Umpires who, in the 1994 season, had one to five years of service are entitled to be paid $728,44 and Umpires who, in the 1994 season, had six or more years of service are entitled to be paid $1,394.44 as their respective shares of the pool monies.

Award: The grievance is denied, in part, and sustained, in part, consistent with the above findings. This Award was signed this 7th day of October, 1996.

/s/ Richard R. Kasher
Richard R. Kasher, Arbitrator

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 97-1702

THE MAJOR LEAGUE UMPIRES' ASSOCIATION,

Appellant,

v.

THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS; THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 96-cv-07437)
District Judge: Honorable Edmund V. Ludwig

Argued on July 14, 1998

Before: SLOVITER and ROTH, *Circuit Judges*
FEIKENS, *District Judge*

JUDGMENT

This case came on to be heard on the record before the United States District Court for the Eastern District of Pennsylvania and was argued on July 14, 1998;

On consideration whereof,

IT IS ORDERED AND ADJUDGED by this Court that the judgment of the district court dated September 2, 1997 be and the same is hereby affirmed.

Costs taxed against appellant.

ATTEST:

/s/ P. Douglas Sisk
Clerk

Dated: JUL 23 1998